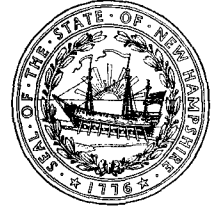




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Allen Bouthillier
Garland Road
Lancaster, New Hampshire 03584

Re: 37-Acre Subdivision /4 Lots with Ponds
Lancaster Tax Map R12, Lot 36
Site Specific Permit # WPS-6621A

**ADMINISTRATIVE ORDER
No. WD 06-013**

April 7, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Allen Bouthillier pursuant to RSA 485-A:22. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, New Hampshire.

2. Allen Bouthillier is an individual having a mailing address of Garland Road, Lancaster, New Hampshire 03584.

C. STATEMENT OF FACTS AND LAW

1. Pursuant to RSA 485-A:17, the Department of Environmental Services ("DES") regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.

2. Env-Ws 415.02(y) includes "disturbing more than 100,000 square feet of contiguous area" as a definition of "significantly altering the characteristics of the terrain."

3. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.

4. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.

5. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for

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DES Web site: www.des.nh.gov

limiting the length of time of exposure of unstabilized soils.

6. Allen Bouthillier is the owner of property located on Garland Road, Lancaster, New Hampshire, more particularly identified on Town of Lancaster Tax Maps as Map R12 Lot 36 ("the Property").

7. On November 21, 2003, DES issued Alteration of Terrain Permit # WPS-6621 to Allen Bouthillier based on engineering plans dated October 31, 2003. Condition #1 of the permit states that "Water quality degradation shall not occur as a result of the project." The Sequencing for Erosion and Sediment Control notes of the plan stated, in part:

a) "(#2) Install perimeter silt fencing in areas of proposed work as shown on the plans prior to grubbing and filling."

b) "(#3) Areas of large exposure after grubbing that are left open shall be temporarily mulched. Stockpiles of grubbing and topsoil shall be mulched and have silt fence placed around the bases of the stockpiles."

8. On October 1, 2004, personnel from DES and from the NH Dept. of Revenue Administration conducted an inspection of the Property. During the inspection the following observations were made:

- a) Gravel-mining operations were on-going;
- b) A dewatering pump was on-site, although it was not operational at the time of the inspection;
- c) Some scouring in a small wetland area adjacent to a tributary stream was apparent; and,
- d) No on-going water quality impacts were observed at the time of this inspection.

9. On October 4, 2004, DES personnel spoke with Mr. Bouthillier via telephone. DES personnel told Mr. Bouthillier that he must not direct discharge from the dewatering of the ponds into wetlands or the stream. Mr. Bouthillier was also informed that his Alteration of Terrain permit would expire the following year. Mr. Bouthillier stated that he would have his consultant contact DES.

10. On November 19, 2005, Allen Bouthillier received an amendment to the Alteration of Terrain permit extending the permit to November 21, 2007.

11. On January 30, 2006, DES received a complaint from abutters to the Bouthillier property stating that sediment-laden water had been discharged into Bunnell Brook on January 29, 2006. DES personnel conducted an inspection of the Property on February 1, 2006, primarily in the northeast section of the Property between ponds #1 and #2 and Bunnell Brook. During the inspection the following was observed:

- a) A stone dam had been constructed in the western end of the swale adjacent to pond #2;
- b) A small amount of sediment was evident in the swale;

- c) Erosion control measures were not visible;
- d) Several large stockpiles of excavated material were not stabilized nor was silt fencing in place around the perimeter of these materials; and,
- e) There was no evidence of sediment deposits in Bunnell Brook.

12. On February 9, 2006, DES personnel met with personnel from the NH Department of Resource and Economic Development (DRED). DRED personnel provided DES with copies of a Cease and Desist Order that had been issued to Allen Bouthillier, as well as photographs of the tributary stream, and his report of discharge into Bunnell Brook on January 26, 2006.

13. DRED personnel confirmed to DES that sediment-laden water was pumped from Pond #2 into a tributary stream that entered into Bunnell Brook, a surface water of the state.

14. Pursuant to RSA 485-A:8, II, Bunnell Brook is classified as a Class B water.

15. RSA 485-A:13 states that it shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface or groundwater of the state without first obtaining a permit from DES. Sediment-laden water constitutes waste as defined under RSA 485-A.

D. DETERMINATION OF VIOLATIONS

- 1. Allen Bouthillier has violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install erosion control measures on the Property in accordance with the Permit and approved plans.
- 2. Allen Bouthillier has violated RSA 485-A:13, I, by discharging waste into the surface waters of the state without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Allen Bouthillier as follows:

- 1. **Immediately cease and desist** dewatering operations.
- 2. **Within 20 days of the date of this Order**, submit a dewatering plan (the "Plan") for any future dewatering activities on the Property to DES for approval. The Plan shall be prepared by a Professional Engineer or a Certified Professional in Erosion and Sediment Control and shall include a schedule for implementing the measures described in the Plan. At a minimum the plan shall include construction of a temporary sedimentation basin to be used for dewatering of the ponds.
- 3. **Within 10 days** of the date of this Order, implement the erosion control plan approved by DES on November 21, 2003.
- 4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Ana Herrero, Compliance Specialist
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Phone: (603) 271-3380
FAX: (603) 271-4128
E-mail: aherrero@des.state.nh.us

F. APPEAL


Any person aggrieved by the determinations of this Order may appeal to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

Filing an appeal of the Order will not automatically relieve Allen Bouthillier of his obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Allen Bouthillier remains obligated to comply with all applicable requirements. DES will continue to monitor Allen Bouthillier's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Coos County Registry of Deeds so as to run with the land.


COPY
Harry T. Stewart, P.E., Director
Water Division


COPY
Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7099 3400 0018 1293 0561

cc: Gretchen R. Hamel, Legal Unit Administrator
James P. Martin, Public Information Officer, DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Coos County Registry of Deeds
Lancaster Planning Board
Lancaster Conservation Commission